

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7731 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No : NO
5. Whether it is to be circulated to the Civil Judge? No :

EXECUTIVE ENGINEER

Versus

HAMID ABDUL SHAIKH

Appearance:

Mr.RC KODEKAR, A.G.P. for Petitioner

MR HK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/08/1999

ORAL JUDGEMENT

1. Notice of this petition was issued on 17th September 1998. Shri H.K.Rathod appears for the respondent. No Counter Affidavit has been filed. The petition can be finally disposed of at the admission stage.

2. Through this writ petition the petitioner has

challenged the order dated 18.12.1997 passed by the Presiding Officer, Labour Court, Junagadh on an application under Section 33-C(2) of the Industrial Disputes Act. The Labour Court has ordered the opponent to pay a sum of Rs.33,600/- towards difference of pay to the applicant.

3. Learned Counsel for the parties have been heard and the impugned order was read over and considered.

4. The first controversy is whether the impugned order was passed under Section 33-C(1) of the Industrial Disputes Act (for short "Act") or under Section 33-C(2) of the Act. According to the learned Counsel for the petitioner it was an order under Section 33-C(1) of the Act. This contention cannot be accepted inasmuch as Section 33-C(1) of the Act is applicable where request is for issuing recovery certificate in pursuance of amount due under some settlement or award to a workman. Section 33-C(2) of the Act, on the other hand, applies to those cases where the determination is to be made by the Labour Court regarding any money or any benefit which is capable of being computed in terms of money to any workman who is entitled to receive the same from the employer. Such question may be raised before the Labour Court which is to decide it within a period not exceeding three months.

5. The impugned order shows that there was no request for issuing recovery certificate rather mention in the impugned order regarding earlier recovery case No.1721/78 itself indicates that prayer for issuance of recovery certificate was made earlier and the recovery proceedings were drawn in the aforesaid case. Thus, subsequent case in which the impugned order was passed was certainly on an application u/s. 33-C(2) of the Act.

6. It is further clear from the discussion in the impugned order that certain benefits were claimed by the applicants through the impugned order and those benefits were granting the same pay which the juniors of the applicant were granted under Desai Pay Commission. Another benefit claimed was that since as per inordinate delay in pay fixation the applicants were entitled to difference of Rs.200/- being loss occasioned to them for delayed fixation. The question of payment raised by the petitioner of this petition was also considered by the Labour Court and ultimately the Labour Court found that the pay was not fixed in accordance with the direction of the Award given by the Labour Court and instead of awarding since 1973 the pay of first grade fitter was allowed to them since 1976. These are therefore

consequential benefits and money due to the respondent of this petition which was claimed through the application and as such this application will be deemed to be an application under Section 33-C(2) of the Act.

7. So far as calculation made in the impugned order is concerned it requires no interference because no manifest error in the calculation could be pointed out by Mr.Kodekar learned A.G.P. so as to term as perverse the decision of the Labour Court.

8. The only point urged by Mr.Kodekar was that the application was time barred inasmuch as it was not moved within one year of the award. This contention cannot be accepted because the limitation of one year is prescribed for application u/s.33-C(1) of the Act whereas no limitation is prescribed under Section 33-C(2) of the Act. This is so apparent from the plain reading of Section 33-C(2) of the Act and as such it is not necessary to burden this order by citing various cases on the point. However, it is sufficient to mention that the Apex Court in the case of Bombay Gas Co.Ltd. v/s. Gopal Bhiva, reported in A.I.R. 1964 SC 752 clearly held that where the Legislature has made no provision for limitation it would not be open to the courts to introduce any such limitation on ground of fairness or justice. The words of Section 33-C(2) are plain and unambiguous and it will be the duty of the Labour Court to give effect to the said provision without any considerations of limitation. In another decision of the Apex Court in Central Bank of India v/s. P.S. Rajgopalan, reported in AIR 1964 SC 743 it was held that it is true that industrial adjudication should not encourage unduly belated claims, but on the other hand, no limitation is prescribed for an application under Section 33 C(2) and it would, on the whole, not be right to refuse an opportunity to the workmen to prove their case only on the ground that they moved the Labour Court after considerable delay.

9. These two cases were considered by this Court in Gujarat State Road Transport Corporation v/s. Keshavlal Maneklal Shah, reported in 1998 (2) G.L.H. 996 and the same view was taken by this Court also.

10. Consequently the application under Section 33 C(2) of the Act was not barred by limitation nor it could be rejected on the ground of bar of limitation. Moreover no such plea was taken before the Labour Court and it is being taken for the first time before this Court. May be that it is a seeming question of law which is tried to be

raised at this stage, but such question cannot be said to be a question of law because Section 33 C(2) prima facie does not prescribe any limitation, hence the bar of limitation proposed to be raised at this stage cannot be said to be really substantial question of law requiring adjudication in this writ petition.

11. For the reasons stated above there is no worth in this petition which is hereby dismissed. No order as to costs.

sd/-

Date : August 09, 1999 (D. C. Srivastava, J.)

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